

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
12/11/02 Item: 3.f

File Number
CP 01-09-080

Application Type
Conditional Use Permit

Council District
5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
601-38-077

PROJECT DESCRIPTION

Completed by: Jenny Nusbaum

Location: Northeasterly side of White Road approximately 300 feet northwesterly of the intersection of White Road and Story Road (1054 South White Road)

Gross Acreage: 14.1

Net Acreage: 14.1

Net Density: n/a

Existing Zoning: CG-Commercial General

Existing Use: Shopping Center

Proposed Zoning: No change

Proposed Use: Shopping Center and Wireless Communications Antennae enclosed in 54 foot high Clock tower

GENERAL PLAN

Completed by: Jenny Nusbaum

Land Use/Transportation Diagram Designation
General Commercial (East Valley/680 Communities)

Project Conformance:
☐ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Jenny Nusbaum

North: Medium Low Density Residential (8 DU./AC)

Unincorporated

East: Medium Low Density Residential (8 DU./AC)

Unincorporated & R-1-8 Residence

South: Commercial and MLDR (8 DU./AC)

CP-Commercial Pedestrian and R-1-8 Residence

North: Medium Low Density Residential (8 DU./AC)

Unincorporated

ENVIRONMENTAL STATUS

Completed by: Jenny Nusbaum

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Jenny Nusbaum

Annexation Title: Story 1-B

Date: 5-6-60

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date:

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Pacific San Jose Holdings L.P.
Attn: John Chamberlain
11455 El Camino Real #200
San Diego, CA 92130

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jenny Nusbaum

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memorandum from Fire Department.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Pacific San Jose Holdings L.P., the applicant, is requesting a Conditional Use Permit to allow construction and use of wireless communications antennae with a maximum height 50 feet enclosed within a clock tower structure and an ancillary equipment building. To allow for the roof pitch, the clock tower structure will have a maximum height of 54 feet. The subject 14.1-acre parcel is designated General Commercial (within the East Valley/680 Communities Strong Neighborhood Initiative (SNI) Area) on the General Plan Land Use/Transportation Diagram and is zoned CG-Commercial General. Installation of wireless communications antennae is a conditional use in the CG-Commercial General Zoning District.

Currently, a shopping center is operating on the subject site, located at the northeasterly side of White Road, approximately 300 feet northwesterly of the intersection of White Road and Story Road (1054 South White Road). Single-family residences and commercial uses are located adjacent to the shopping center and across both South White and Story Roads.

Previously, the applicant proposed a clock tower to house the proposed wireless communications antennae, and the project was noticed for the Planning Commission hearing of June 12, 2002. The notice stated that the project, as proposed with the clock tower, was exempt from CEQA review. Prior to the hearing date in June, the applicant requested that the item be dropped from the agenda, because construction cost estimates were higher than the applicant expected.

The applicant then proposed an exposed 50-foot-high monopole with a diameter of approximately 30 inches that would not be enclosed in a clock tower. Staff determined that approval of the monopole with the potential for visual impacts if installed without the clock tower enclosure, would not qualify for an exemption from CEQA review. Based on comments received at a community meeting on September 19, 2002 and subsequent phone calls from neighbors, and given the lack of consistency with the Land Use Policy for Wireless Communication Facilities, Planning staff had decided to recommend denial of the proposed 2 ½ foot-wide monopole and bring the item to the Commission with CEQA review incomplete.

In mid November, Planning staff sent out a notice for the December 11th Planning Commission hearing, which described the project as a monopole with wireless communications antennae and stated that CEQA was incomplete. After this hearing notice was sent, but prior to the hearing, the applicant agreed to revise the project design once again to incorporate the clock tower.

Therefore, the project that is now before the Planning Commission is a clock tower with wireless communications antennae incorporated within, and this project is again exempt from CEQA review.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennae posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennae were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennae. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennae.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project, as conditioned, is exempt from further environmental review under the provisions of the California Environmental Quality Act, specifically under Section 15303 (Small Structures) of the State Guidelines for Implementation. Because the proposed antennae would be enclosed within a clock tower structure, additional analysis of potential visual impacts is not warranted.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial(East Valley/680 Communities) in that wireless communication antennae as proposed are compatible with commercial uses, and the 50-foot-high wireless antennae are within the General Plan 50-foot height limit for the subject site. The proposed wireless antennae will be fully enclosed within the clock tower.

The maximum height of the clock tower structure is 54 feet. This height is consistent with the General Plan Urban Design Policy #11 which allows a height limit established in the context of project review for structures, other than buildings, where substantial height is intrinsic to the function of the structures and where such structures are located to avoid significant adverse effects on adjacent properties. The additional height of the clock tower structure is necessary to adequately cover the wireless communications antennae and avoid aesthetic impacts on adjacent properties. Therefore, the project height is consistent with the General Plan.

ANALYSIS

The primary issue associated with this proposal is consistency with City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

In October, 2002, the Planning Commission recommended approval of an update to the existing Wireless Policy. As of December 4, 2002, however, Council has not yet adopted a resolution to update the Policy. Therefore, Planning staff has analyzed the proposed project under the existing Policy, last revised in 1996.

The proposal is consistent with the Council policy in that:

- 1) The proposed wireless communications antennae are located and designed to minimize public visibility. A clock tower is proposed on the subject site that will completely enclose and cover the wireless communications antennae. Because the proposed clock tower will be architecturally integrated with the existing shopping center and the surrounding neighborhood, the project will not degrade the existing visual character or quality of the site or its surroundings.
- 2) The proposed wireless communications antennae will be located no closer than the minimum required 50-foot setback from a residentially-designated parcel. Landscaping will be provided around the clock tower to buffer adjoining commercial uses and residential uses across South White Road and Story Road.
- 3) The overall height of the clock tower, including antennae, does not exceed 54 feet as allowed in the CG-Commercial General Zoning District.
- 4) Based upon an alternatives analysis submitted by the applicant for the project, as well as a site visit and a review of a conceptual site plan and elevations, Planning staff has determined that the proposed clock tower with wireless communications antennae is consistent with City Council Policy 6-20, which permits wireless communications antennae within a free-standing structure in the General Commercial designation provided that no other site would be feasible to locate the proposed wireless facility.
- 5) Ancillary equipment will be enclosed within a building.
- 6) The project will not eliminate any required parking.

PUBLIC OUTREACH

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

On September 19, 2002 a previous version of the project design, which proposed an exposed 50-foot high monopole with a 30-inch diameter, without a clock tower enclosure, was presented at the East Valley/680 Neighborhood Action Committee meeting. Several neighbors spoke against the proposed monopole design. They commented that the unenclosed monopole was not consistent with their vision for improving their neighborhood, and they expressed concern regarding health risks. Planning staff explained that health risk assessment was beyond the purview of the City, but the project would be required to be within Federal standards. The applicant's representative confirmed that the project would be consistent with Federal requirements. After the meeting, the applicant sent information regarding the project's health risks to Planning staff. This information has been included in the project file and is available to the public.

In response to the neighbors' concerns regarding the aesthetics of the unenclosed monopole, the applicant has agreed to instead propose a clock tower to fully enclose the wireless communications antennae. Staff believes that with this change, the project design has addressed the neighbors' issues. The project was also coordinated with the SNI staff team within Planning.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit with the condition that revised plans be submitted within 30 days of approval, and include the following findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram, land is located in the East Valley / 680 Communities SNI Area.
2. The project site is located in the CG-Commercial General Zoning District.
3. The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA).
4. The project consists of wireless communications antennae enclosed within a clock tower structure and an ancillary equipment building.
5. The City Council Wireless Communication Facilities Policy permits wireless communications antennae in areas designated General Commercial on the General Plan.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project complies with all applicable provisions of the Zoning Ordinance.
2. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
3. The location of the wireless communications antennae has been determined to be appropriate per the Wireless Communications Facilities Policy based on the limited options in this area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

2. **Plan Revisions.** Within **30 days** of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 30 days shall cause this permit to automatically expire.
 - a. **Revised Complete Plan Set.** The applicant shall submit a revised complete plan set, showing the location and design of the proposed clock tower and ancillary equipment building with proposed landscaping, to the satisfaction of the Director of Planning.
 - b. **Wireless Antennae Completely Enclosed and Covered within Clock Tower.** The applicant shall enclose and cover the wireless antennae within the clock tower so that the wireless antennae are not visible, to the satisfaction of the Director of Planning.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
4. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "White Road Plaza, 1054 South White Road, San Jose, CA 95127," dated September 18, 2002, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall

notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
6. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
7. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
8. **Lighting.** This permit allows no on-site lighting except as specified on the approved plan set.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Colors and Materials.** All clock tower, wireless communications antennae, and ancillary equipment building colors and materials are to be those specified on the approved plan set.
14. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 01-09-080, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

15. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.
16. **Enclosures/Screening.** Equipment shall be enclosed with a building to match proposed clock tower architecture to the satisfaction of the Director of Planning.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
18. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennae within this clock tower. The applicant and wireless communication facility operator shall notify the Director of Planning, Building and Code Enforcement of any proposals by other wireless communications providers to collocate antennae within this clock tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this permit.
19. **Maximum Height.** The clock tower including wireless communication antennae shall not exceed fifty four (54) feet in height.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Engineering Services

Tim Parker, American Assets, 11455 El Camino Real, Suite 200, San Diego CA 92108